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No. 88-325

In the Supreme Court of the United States

OCTOBER TERM, 1988

American Trucking Associations, Inc., et al.,
Petitioners

v.

Maurice Smith, Director, Arkansas Highway and Transportation Department, et al.,
Respondents

REPLY BRIEF TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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REPLY BRIEF TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

STATEMENT

There was a national debate and a very highly contested local debate concerning truck weights. Arkansas was one of the states with the lower truck weights of 73,280 pounds maximum gross loaded weight. Across the nation, Arkansas and states to the north formed a "barrier" for cross country trucking at 80,000 pounds.

For several state legislative sessions, the trucking interest attempted to raise truck weights to 80,000 pounds. Because of the necessary trade off between truck weights and increased taxes on trucks, the controversy never resolved. The conflict between increased damages caused by higher truck weights and increased revenues to pay for the repairs focused the dispute on the amount of damage caused by a truck weighing 80,000 pounds versus a truck weighing 73,280 pounds.

The Surface Transportation Act of 1982 [1] required all states to raise truck weights to 80,000 pounds. The Arkansas Legislature quickly raised the truck weights to 80,000 pounds [Ark. Code Ann. 27-35-203 (Repl. 1987) (App. A infra)] and later in the same session enacted a truck tax, Ark. Code Ann. 27-35-205 (Repl. 1987) (HUE Tax) (App. B infra). The Arkansas Legislature preferred a truck tax between the weight categories of 73,280 pounds to 80,000 pounds and preferred to not raise taxes on trucks with lower weights.

Because Arkansas taxed a new category of commercial use, it became extremely important to determine the effect of the heavy trucks in the weight categories of 73,280 pounds to 80,000 pounds. An American Trucking Association witness testifying at the trial in this case stated that the truckers would receive $115.8 million in additional monies because of the increased weights in Arkansas. This testimony was based on a 1982 report. The trial court found the damages caused by the increased truck weights would be $53 million dollars a year. The truck tax was estimated to produce approximately $22 million. The tax generated in 1983 approximately $23 million and by 1987 the tax had generated $31 million per year (App. C infra). The Arkansas Supreme Court's concern about the truckers receiving a windfall should refunds be retroactive is based on the clear testimony of profits earned and damages caused by the truckers [2].

1.
23 U.S.C. §127

2.
ATA v. Gray, 295 Ark. 43, 746 S.W.2d 377, 379 (1988).

REASONS FOR REFUSING THE PETITION

I. ARKANSAS AND PENNSYLVANIA HAD DIFFERENT TAXES

Although the Arkansas Truck Tax may look similar to the Pennsylvania Tax because the "flat" maximum for Arkansas is $175.00 as compared to the Pennsylvania Tax maximum of $180.00, the taxes are very different.

Over 50% of the revenues in 1986-87 were from truckers who paid the tax on a mileage rate rather than on a flat rate. (App. C infra). These truckers either paid 5 cents per mile for the past year's miles or 8 cents per mile for a trip permit. All taxes on trucks with 73,280 pounds total weight and below remained the same. They paid no additional taxes and did *not* have any decreases in taxes. The HUE tax is only on the category between 73,281 pounds and 80,000 pounds gross loaded weight.

Pennsylvania reduced its license fee by $180.00. Therefore, Pennsylvania domestic trucks paid no increase in taxes because the $180 axle tax would be offset by the decrease in the license fee. *ATA v. Scheiner*, 107 S.Ct. 2829, 2834 (1987).

Arkansas attempted to raise additional revenues for road construction to repair the damages from the heavy trucks. With its tax enjoined and Justice Blackmun's statement that in his opinion the tax was unconstitutional and he felt certain that four judges would note probable jurisdiction [3], Arkansas was forced to seek new legislation.

The Arkansas Legislature would not convene until January, 1989, therefore the Governor of Arkansas issued a call for a Special Legislative Session in October 1987, to remove the "flatness" of the Arkansas tax.

3.
ATA v. Gray, 108 S Ct. 2 (1987).

Justice Blackmun's opinion doomed the Arkansas HUE Tax. The only constitutional tax appeared to be a mileage tax with a clause "grandfathering in" those who had previously paid the tax rather than assessing them under a new tax. The new rate was set at 2.5 cents per mile without a maximum [4].

II. THE LOWER COURT DECISION

The Arkansas Supreme Court prospectively overruled the HUE tax in light of the *Scheiner* decision, *ATA v. Gray*, supra. However, the Arkansas Supreme Court went one step further and ordered partial refunds without permitting any Arkansas licensed truckers to receive the refunds. The decision additionally awards attorney fees.

The Arkansas Supreme Court, however, did not reach questions of state law inasmuch as it did not need to answer state law questions on tax refunds in its opinion. The state law issues not addressed are as follows: Sovereign Immunity, requirement of legislative appropriation of money from the Arkansas Treasury, and voluntary compliance with the tax [5]. In *Baccus Transports Ltd. v. Dias*, 468 U.S. 263 (1984), this court said:

> These refund issues . . . were not addressed by the state courts . . . . Also, resolution of those issues, if required at all may necessitate more of a record than so far has been made in this case. We are reluctant, therefore, to address them in the first instance . . . Ibid, 277.

4.
Ark. Code Ann. 27-35-205 (Repl. 1988) (App. D infra)

5.
The Arkansas Supreme Court in determining the date that taxes are paid involuntarily normally uses the date litigation begins. *City of Little Rock v. Cash*, 277 Ark. 494, 644 S.W.2d 229 (1982), cert. denied 462 U.S. 1111 (1983). However, in this case the truckers could have easily hauled at 73,280 pounds. They "voluntarily" chose to incur the tax liability and also litigate.

III. PROSPECTIVE OVERRULING

The principle of "prospective" overruling occurred in *Chevron Oil Co., v. Huson*, 404 U.S. 97 (1971). The three prong test in *Chevron* may be stated as follows:

> 1. The new decision must set forth guidelines that clearly overrule past precedent. The litigants must have relied upon the past precedent and the new decision must not have been seen as forthcoming.

The American Trucking Associations challenged the Arkansas truck tax and the Pennsylvania truck tax. The states with taxes very similar but which were not in litigation in June 1987, were Kentucky and Indiana [6]. Therefore, four state legislatures previously adopted taxes directly affected by the *Scheiner* decision.

The dissents in *Tyler Pipe Indus. v. Washington*, 107 S.Ct. 2810 (1987) and *ATA v. Scheiner*, supra, state that the decisions constitute new precedent. This precedent could not have been seen as forthcoming because nine states had relied upon previous commerce law permitting a fixed or maximum tax. This new precedent may have originated in *Armco v. Hardesty*, 467 U.S. 638 (1984). However, states such as Washington did not foresee *Armco*, as having an effect on its laws. *National Can v. Dept. of Rev.*, 749 P.2d 1286 (Wash. 1988) appeal dism'd and cert. denied 108 S.Ct. 2030 (1988). The Washington Supreme Court believed the recent decision in *Tyler Pipe Indus.*, supra, qualified for prospective overruling under *Chevron v. Huson*, supra., because, among other reasons, new precedent occurred that could not have been foreseen. The State of Washington believed that its business and occupational tax was not similar to West Virginia's tax as determined in *Armco v. Hardesty* supra. See *National Can v. Dept. of Rev.*, supra at 1290. The *Armco* decision occurred in 1984, and Washington used its

6.
Other states with fuel marker fees similarly affected because the fees were in the nature of a flat tax were: Connecticut, Maine, Maryland, New Jersey, and Vermont. See footnotes 11 through 20.

Tyler Pipe Industries date, June 23, 1987, for prospective overruling. *National Can v. Dept. of Rev.*, at 1291.

> 2. The void ab initio aspect of unconstitutionality would not assist in the enforcement of the unconstitutional nature of the tax law.

The petitioners, ATA, made two arguments in relationship to this case about the second prong of *Chevron*. First, a state should not profit from its wrongs, and second, states are encouraged to enact unconstitutional legislation. These arguments do not appear responsive to the second prong of *Chevron*.

Flat taxes do not need retroactive application to encourage removal. Since June, 1987, there has been litigation in most of the states with flat taxes and high fuel marker fees. Arkansas called a Special Session of the Legislature solely for the purpose of removing the maximum rate of the tax because of Justice Blackmun's injunction. Declaring a tax unconstitutional does not require any enforcement. The taxpayers will enforce it and governments will change laws to prevent loss of tax revenues. ATA argues that Arkansas will profit from the tax. Arkansas increased truck weights and suffered additional damages from the heavier trucks. There is no profit in the HUE tax. Increased damages are much more than the total revenues from the HUE tax. If Arkansas is required to refund any money, new road construction will cease for a period of time. When Justice Blackmun impounded the HUE tax on August 14, 1987, the Department could not award any construction contracts for several months. Arkansas highway revenues are special revenues derived from taxes on vehicle license registrations and fuel taxes [7] These cash funds are distributed on the last business day of each month by the State Treasurer [8].

7.
Ark. Code Ann. 27-70-202 (App. E infra)

8.
Ark. Code Ann. 27-70-203 (App. F infra)

These special revenues are distributed monthly as follows: Three percent (3%) to the Constitutional and Fiscal Agencies and the remaining funds are divided 15% to the Counties, 15% to the Cities and 70% to the Highway Department. [9]

Arkansas does not accrue its highway construction funds. The funds are spent on a cash basis. Salaries, internal budgets and all construction funds are appropriated every two years by the Legislature *in advance* of collection. All excess or unspent funds may be used for construction. Therefore, monies are expended as they are received.

The petitioners, ATA, have had a long history of not wanting to pay their share of taxes. The road taxes (fuel and license taxes) are primarily paid by passenger cars. [10] The truckers have consistently opposed paying a fair share of maintenance costs and prefer to maintain the current rate of inequitable taxes. Any refund will only enrich companies who have previously charged the tax as a freight bill, cost of doing business or charged the independent owner-operator. Any inequity for Arkansas truckers has been removed by refunding the escrowed monies only to out of state truckers. *ATA v. Gray*, supra.

ATA's second argument is that if refunds are not retroactive, legislatures are encouraged to draft unconstitutional legislation. This statement insults the legislative process. The first impediment to legislation clearing a committee is a possibility of unconstitutionality. The legislative process is an extremely complicated democratic procedure with much "give and take." The

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9.
Ark. Code Ann. 27-70-206 (App. G infra)

10.
Truck license fees are apportioned so that one truck pays the average of one license fee, not several license fees, *ATA v. Scheiner*, supra, at 2834. Diesel fuel taxes are paid by all vehicles with diesel engines.

ATA's statement demonstrates contempt for the legislative branch of government indicating a preference for judicial action.

3. What results and inequities will be imposed by the retroactive application of this case as compared to prospective application.

The truckers on a nationwide basis received an increase of $115.8 million per year in a 1982 projection of profits from being able to haul goods across Arkansas in an 80,000 pound truck as compared to a 73,280 pound truck. The increase in damages was estimated to be $53 million and that was the damage figure adopted by the trial judge in this case. The revenues received from the HUE tax have all been appropriated for road construction and maintenance and expended. The truckers received extra profits with heavier weights.

In the refund proceedings in this case, the independent owner/operators have moved to be joined as a class for refunds asserting that their employer carriers forced them to pay the HUE tax. These owner/operators have requested that they should receive the refunds because they were billed by their employer for the tax.

The argument of the ATA is that the Arkansas trucker has an economic advantage as compared to non-Arkansas truckers under the HUE tax. However, on the list of truckers that the ATA used to assert a three to one mileage difference there appeared most of the large Arkansas trucking companies. Most Arkansas carriers license out of state. The ATA argues that out of state truckers paid the tax at an unconstitutional rate. However, they do not discuss that some out of state truckers paid the $175.00 maximum amount, at presumably an unconstitutional rate, but would receive a refund. It appears that the truckers are arguing in the courts the same argument they made in the legislature, "increase the truck weights but don't charge for

the increased maintenance costs." The equities are that the truckers received huge economic benefits and the taxpayers received the burden of maintenance repairs.

IV. REFUND DECISIONS

The *Scheiner* decision, determining flat taxes on trucks to be unconstitutional, impacted Pennsylvania [11], Arkansas [12] Indiana [13] and Kentucky [14]. Other flat taxes affected were fuel marker fees in Pennsylvania [15], Vermont [16]. New Jersey [17], Maryland [18], Maine [19], and Connecticut [20]. Additionally some states had "retaliated" against Pennsylvania's, Arkansas', Indiana's, and Kentucky's truck tax. These states had retaliatory taxes: Florida [21], Georgia [22], Maine [23], Nebraska [24], New Hampshire [25], New Jersey [26], Oklahoma [27] and Vermont. [28] West Virginia's and Washington's business and occupational taxes were declared unconstitutional by *Armco* and *Tyler Pipe*. West Virginia refused refunds and prospectively overruled because of the new precedent. [29] Washington did the same. [30]

Some of the decisions from all this litigation have resulted in a variety of refund decisions based on State laws

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11.
Pa. Cons. Stat. Ann. tit. 75 §9901 (Purdon Supp. 1986)

12
Ark. Code Ann. 27-35-205 (Repl. 1987)

13.
Ind. Code Ann. §6-6-8 (Burns Supp. 1986)

14.
Ky. Rev. Stat. Ann. §138.660 (4)-(7) (Baldwin Supp. 1986)

15.
Pa. Cons. Stat. Ann. tit. 75 § 2102 (Purdon 1981)

16.
Vt. Stat. Ann. tit 23 §§ 415, 3007, 3010 (Supp. 1982 and 1986)

17.
N.J. Stat. Ann. §54:39A-10 (West Supp. 1986)

18.
Md. Transp. Code Ann. §13-423(a) (1984)

19.
Me. Rev. Stat. Ann. tit. 29 §246-A (Supp. 1981)

20.
Conn. Gen. Stat. Ann. §12-487 (West 1983)

21.
Fla. Stat. Ann. §207.004(5)(d) (West Supp. 1986)

22.
Ga. Code Ann. §40-2-111 (1985)

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Me. Rev. Stat. Ann. tit. 29 §2243 (Supp. 1985)

24.
Neb. Rev. Stat. §60-305.03 (1984)

25.
N.H. Rev. Stat. Ann. §260:53 (1982)

26.
N.J. Stat. Ann. §39:3-6 (West 1973)

27.
Okla. Stat. Ann. tit. 47 §1120 (West Supp. 1985)

28.
Vt. Stat. Ann. tit. 23 §417 and 3021 (Supp. 1982 and 1985)

29.
Armco, Inc. v. Hardesty, supra. The refund case is *Ashland Oil, Inc. v. Rose*, 350 S.E.2d 531 (W. Va. 1986) Appeal dism'd for lack of jurisdiction, 107 S.Ct. 1949 (1987)

30.
Tyler Pipe Indus. v. Washington Dept. of Revenue, supra. The refund case is *National Can Corp. v. Dept. of Revenue*, supra.

such as decisions applying state Sovereign Immunity [31], refunding impounded funds [32], and decisions denying refunds because of voluntary compliance with the tax [33].

The Arkansas Supreme Court has refunded unconstitutional taxes from the date of inception of the tax [34], from the date of litigation [35], or prospectively overruling the tax in the future [36]. These refund decisions are more appropriate administered by state courts applying the principles established in *Chevron v. Huson*, supra.

31.
ATA v. Conway, 508 A.2d 405 and 408 (VT. 1986) cert. denied; 107 S.Ct. 3262 (1987).

32.
Private Truck Council of America, Inc. v. New Hampshire, 517 A.2d 1150 (N.H. 1986). Retaliatory tax declared unconstitutional and refunds paid from impounded funds only. Retroactive application denied because of lack of proof of involuntary payment.

33.
Private Truck Council of America, Inc. v. New Jersey, 534 A.2d 13 (N.J. 1987). New Jersey refunded its unconstitutional retalitory tax from the date of litigation deciding that the litigation date was when protesting an involuntary tax would begin; *Continental Trailways v. Director*, 509 A.2d 769 (N.J. 1986) cert. dism'd per stipulation 107 S.Ct. 1636 (1987). An excise tax refund was refused because Trailways paid the tax on mistake of law and therefore voluntarily paid the tax; and *Private Truck Council v. Sec. of State*, 503 A.2d 214 (Me. 1986) cert. denied 476 U.S. 1129 (1986) ruled that the taxes were voluntarily paid and ordered no refunds except for impounded funds.

34.
Ragan v. Venhaus, 289 Ark. 265, 711 S.W.2d 462 (1986)

35.
City of Little Rock v. Cash, supra.

36.
Sp. Sch. Dist. of Ft. Smith v. Sebastian Co., 277 Ark. 326, 641 S.W.2d 702 (1982) where a county school tax was declared prospectively unconstitutional, without refunds and not to take effect until the end of 1983 with tax collection to be made through the fall of 1984.

In conclusion, Arkansas submits that when an established tax is declared unconstitutional, there is a great deal of sorting out that must occur. As the State of Washington viewed its tax differently from West Virginia, Arkansas viewed its tax as substantially different from Pennsylvania.

The Arkansas HUE tax collection year began in June. Mailouts occurred earlier, however tax revenues and qualifications would not be received or sent until June 1. The $18 million that the ATA asserts Arkansas collected after the *Scheiner* decision is incorrect. Included in the $18 million are revenues collected during June, 1987, for the fiscal year 1986-87 and revenues for the 1987-88 year collected before June 23, 1987.

The decision by the Arkansas Supreme Court partially refunding the HUE tax and awarding attorney fees is an excellent resolution of the new precedent established by *Scheiner*.

CONCLUSION

The petition for the writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

27-35-203. Single and tandem axle load limits.

(a) Maximum Single-Axle Load. The total gross load imposed on the highway by the wheels of any one (1) single axle of a vehicle shall not exceed twenty thousand pounds (20,000 lbs.).

(b) Maximum Tandem-Axle Load. (1) The total gross load imposed on the highway by two (2) consecutive axles in tandem articulated from a common attachment or individually attached to the vehicle, and spaced not less than forty inches (40") nor more than ninety-six inches (96") apart, shall not exceed thirty-four thousand pounds (34,000 lbs.).

(2) No one (1) axle of any such group of two (2) consecutive axles shall exceed the load permitted for a single axle.

(c) Maximum Weight on Front or Steering Axle. (1) The maximum weight imposed on the highway by the front steering axle of a vehicle shall not exceed twelve thousand pounds (12,000 lbs.).

(2)(A) The Director of State Highways and Transportation shall issue special permits for a maximum single front or steering axle weight not to exceed eighteen thousand pounds (18,000 lbs.) and a maximum tandem front or steering axle weight of not to exceed thirty-two thousand pounds (32,000 lbs.) for vehicles of special design, equipment, or construction, engaged in occasional or specialized heavy hauling such as, but not limited to, hauling of heavy machinery, commodities which require specialized equipment, oil or gas field equipment, or similar equipment, for a period of not more than one (1) year, upon application containing satisfactory proof that the vehicles are used solely for the above purposes.

(B) Permits may contain limitations upon speed of operation that the director may deem necessary for safety.

(3) The permits authorized under this subsection shall apply only to the front or steering axle and shall not affect the requirement of § 27-35-210 that special permits be obtained for vehicles exceeding other maximum size or weight limitations imposed in this subchapter.

(d)(1) Subject to the limit upon the weight imposed upon the highway through any one (1) axle as set forth in subsections (a), (b), and (c) of this section, no vehicle, or combination of vehicles, shall be operated upon the highways of this state when the gross weight is in excess of eighty thousand pounds (80,000 lbs.).

(2)(A)The foregoing maximum gross weights shall be applicable to vehicles, or combinations of vehicles, operated on highways in this state that are a part of the federal interstate highway system or that have been designated by the State Highway Commission as primary highways.

(B) On all other highways in this state, the maximum gross weight of any vehicles, or combinations thereof, shall not exceed sixty-four thousand pounds (64,000 lbs.).

(3)(A) However, vehicles, or any combination of vehicles, of a gross weight in excess of sixty-four thousand pounds (64,000 lbs.) and not in excess of seventy-three thousand two hundred eighty pounds (73,280 lbs.) may operate upon the secondary highways of the state at a speed not in excess of forty (40) miles per hour.

(B) Vehicles, or any combination of vehicles, of a gross weight in excess of seventy-three thousand two hundred eighty pounds (73,280 lbs.) and not in excess of eighty thousand pounds (80,000 lbs.)

operating on the secondary highways of the state shall also be limited to a maximum speed of forty (40) miles per hour.

(4) Greater gross weights than permitted may be authorized by special permit issued by competent authority as authorized by law, or lesser gross weights will be required when highways are posted.

(e)(1) No vehicle, or combination of vehicles, shall operate upon any highway in this state when the gross weight of the vehicle, or combination thereof, is in excess of seventy-three thousand two hundred eighty pounds (73,280 lbs.) unless the vehicle, or combination thereof, shall not exceed the value given in Table I corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot.

(2) All vehicles desiring to operate with the increased axle weight as provided by this subsection must comply with the formula in Table I.

Table I

GROSS WEIGHTS ALLOWABLE UNDER THE FORMULA CONTAINED IN THE FEDERAL WEIGHT LAW ENACTED JANUARY 4, 1975, THAT ARE APPLICABLE TO VEHICLES OR COMBINATIONS THEREOF IN ARKANSAS FOR GROSS WEIGHTS IN EXCESS OF 73,280 POUNDS

FORMULA $W = 500 \dfrac{LN}{N - 1 + 12N + 36}$

Except that two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds (34,000 lbs.) each, providing that the overall distance between the first and last axles of the consecutive sets of tandem axles is thirty-six feet (36') or more.

W – maximum weight in pounds carried on any group of two (2) or more axles computed to the nearest five hundred pounds (500 lbs.).
L – distance in feet between the extremes of any group of two (2) or more consecutive axles.
N – number of axles in group under consideration.

Distance in feet between the extremes of any group of 2 or more consecutive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles		
	4 axles	5 axles	6 axles
33			74,000
34			74,500
35			75,000
36			75,500
37			76,000
38			77,000
39			77,500
40			78,000
41		73,500	78,500
42		74,500	79,000
43		75,000	80,000
44		75,500	80,000
45		76,000	80,000
46		77,000	80,000
47	73,500	77,500	80,000
48	74,000	78,000	80,000
49	74,500	78,500	80,000
50	75,500	79,500	80,000
51	76,000	80,000	80,000
52	76,500	80,000	80,000
53	77,500	80,000	80,000
54	78,000	80,000	80,000
55	78,500	80,000	80,000
56	79,000	80,000	80,000
57	80,000	80,000	80,000

(3)(A) If the Federal Highway Administration or the United States Congress prescribes or adopts vehicle

size or weight limits greater than those prescribed by the Federal-Aid Highway Act of 1956 which limits exceed, in full or in part, the provisions of subsections (a), (b), (c), (d), or (e), the State Highway Commission shall adopt size and weight limits comparable to those prescribed or adopted by the Federal Highway Administration or the United Staes Congress and shall authorize the limits to be used by owners or operators of vehicles while the vehicles are using highways within this state.

(B) No vehicle size or weight limit so adopted by the commission shall be less in any respect than those provided for in subsections (a), (b), (c), (d), or (e) of this section.

(f)(1)(A) Vehicles, or a combination of vehicles, transporting products commonly recognized in interstate commerce at gross weights exceeding seventy-three thousand two hundred eighty pounds (73,280 lbs.) shall be permitted direct access across any highway in this state to or from the nearest federal interstate highway or the nearest state primary highway.

(B) Vehicles, or combinations thereof, shall be subject to the limits set forth in subsections (a), (b), (c), (d), (e), and (g).

(2) Where more than one (1) highway in this state affords access to or from the point of shipment or receipt within this state, the State Highway Commission may designate the access route to or from the nearest federal interstate highway or state-designated primary highway.

(g)(1)(A) Vehicles, or combinations of vehicles, with five (5) axles hauling unfinished and unprocessed farm products, forest products, or other products of the soil from the point of production, harvesting, or severance to the point in this state at which they shall first undergo any processing, preparation for processing, conversion, or transformation from their

raw, natural, or severed state shall be permitted an eight percent (8%) variance above the allowable gross weight whenever the formula in subsection (e) is applied to the vehicle or combination of vehicles.

(B) Vehicles, or combinations of vehicles, with five (5) axles and used exclusively by the owner of livestock or poultry for hauling animal feed to the owner's livestock or poultry for consumption in this state shall be permitted an eight percent (8%) variance above the allowable gross weight whenever the formula in subsection (e) is applied to the vehicle or combination of vehicles.

(C) A maximum gross weight, including any allowable variance or tolerance, shall not exceed eighty thousand pounds (80,000 lbs.).

(2)(A) Vehicles, or a combination of vehicles, meeting all of the requirements of this subsection shall not be required to meet the tandem axle load limits of subsection (b) of this section if the vehicles, or combinations thereof, do not exceed the allowable gross weight permitted by the formula in subsection (e) of this section, plus any variance, and do not exceed a gross weight of eighty thousand pounds (80,000 lbs.).

(B)(i) No tandem axle shall exceed thirty-six thousand five hundred pounds (36,500 lbs.) under this subsection.

(ii) No variance on gross weight or axle shall be permitted on federal interstate highways.

(iii) When a violation of this subsection occurs, fines and penalties shall be assessed without regard to any variance on gross weight or axle weight that may be applicable.

(h)(1) When any axle, including any enforcement tolerance, is overloaded but the total weight of all axles, including the steering axle, does not exceed the maximum

total weight allowed for all axles including the steering axle, the operator shall be permitted to unload a portion of the load or to shift the load if this will not overload some other axle, without being charged with violating this section and without being required to pay the penalties provided by law.

(2) The maximum axle load provided for in this section is subject to reduction as provided in §§ 27-35-101 – 25-35-103.

(i)(1) Vehicles, or combinations of vehicles, with five (5) axles hauling sand, gravel, rock, or crushed stone shall be exempt from the federal bridge formula found in subsection (e) of this section on noninterstate highways in this state.

(2) Such vehicles must comply with the tandem axle limit of thirty-four thousand pounds (34,000 lbs.) and the single axle limit of twenty thousand pounds (20,000 lbs.).

(j) Any operator found violating the provisions of subsection (d) prohibiting the operation of vehicles, or combination of vehicles, of a gross weight in excess of sixty-four thousand pounds (64,000 lbs.) and not in excess of eighty thousand pounds (80,000 lbs.) upon the secondary highways of the state at a speed in excess of forty (40) miles per hour, or any owner, principal, employer, lessor, lessee, agent, or officer of any firm or corporation who permits such operator to violate these provisions, shall be guilty of a misdemeanor as prescribed in § 27-35-202 and shall, in addition, pay a penalty, to be computed as prescribed in § 27-35-202, for all weight loads in excess of sixty-four thousand pounds (64,000 lbs.).

APPENDIX "B"

27-35-204. Compliance with Highway Use Equalization Tax Law.

Any motor vehicle, registered in Arkansas at the maximum registration fee for sixty-eight thousand one pounds (68,001 lbs.) to seventy-three thousand two hundred eighty pounds (73,280 lbs.) as provided in § 27-14-601, or any motor vehicle registered in any other state to carry in excess of seventy-three thousand two hundred eighty pounds (73,280 lbs.) shall be authorized to operate in this state with a gross weight of up to eighty thousand pounds (80,000 lbs.) in accordance with §§ 27-35-107, 27-35-203, 27-35-206, and 27-35-208, if the vehicle complies with the appropriate subsections of § 27-35-205, the Highway Use Equalization Tax Law.

27-35-205. Highway use equalization tax.

(a) As used in this section, unless the context otherwise requires:

(1) "Department" means the Director of State Highways and Transportation;

(2) "Division" means the Director of the Department of Finance and Administration;

(3) "Motor vehicle" means all cargo vehicles required to be registered for use upon the public highways of this state, which are designed, used, or maintained primarily for the transportation of property and having a declared gross weight of seventy-three thousand two hundred eighty-one pounds (73,281 lbs.) or more. For the purpose of this section, truck tractors, single unit trucks, semitrailers, and trailers operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to use or control, of the part of such a vehicle furnishing the

motive power is the highway user with respect to the entire vehicle and is, accordingly, subject as such to the provisions of this section;

(4) "Truck" includes the terms "truck" or "truck tractor" and "semi-trailer" or "trailer" when operated in combination with a truck or truck tractor;

(5) "User" includes any person having the use and control, or the right to the use and control, of any motor vehicle;

(6) "Highway" includes all highways, roads, and streets of this state generally open to the use of the public as a way for vehicular traffic;

(7) "Gross weight" means the actual weight of the truck or truck tractor, plus the actual weight of the heaviest semitrailer or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon.

(8) "Arkansas registered vehicle" or "Arkansas registered truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident and bearing an Arkansas license plate.

(b)(1) A tax is imposed upon all users of motor vehicles in compensation for the use of the highways of this state to be known as the "Highway Use Equalization Tax."

(2) Such tax shall be in addition to all other taxes required to be paid on such vehicles except as provided in this section.

(c) The Highway Use Equalization Tax shall not apply to any motor vehicle whose declared gross weight, as defined in subsection (a) above, is seventy-three thousand two hundred eighty pounds (73,280 lbs.) or less; nor to

vehicles used exclusively in hauling unfinished and unprocessed farm products, forest products, clay minerals, or ores from the point of production, harvesting, or severance to the point at which they shall first undergo any processing preparation for processing, conversion, or transformation from their raw, natural, or severed state; nor to vehicles used exclusively for hauling animal feed by owners of livestock or poultry for consumption by livestock or poultry owned by them; nor to any vehicle owned and operated by the federal government, or the State of Arkansas, or any political subdivision thereof.

(d) The provisions of this section shall not apply to any motor vehicle used on an interstate trip with an origin or destination within ten (10) miles of the geographic boundaries of this state, if the one-way travel distance in the state is not over ten (10) miles.

(e)(1)(A) The user of every vehicle subject to this section which is an Arkansas registered vehicle, before operating such vehicle over the highways of this state, shall qualify such vehicle with the division.

(B)(i) Qualifications shall be made by application to the division on forms to be provided by the division.

(ii) The application may be filed with the division at the time of registration of the vehicle.

(2)(A) Such application shall be accompanied by payment to the division of a fee of five dollars ($5.00), to be deposited into the Constitutional and Fiscal Agencies Fund, which fee shall cover the clerical cost of such qualification.

(B)(i) Upon receipt of such application and payment of the tax as determined in this section, the division shall make appropriate record of the vehicle qualified and certify such qualification on the applicant's registration certificate or a registration cab card, one of

which is to be carried in the cab of the vehicle at all times.

(ii) The registration certificate or registration cab card, in addition to the registration information and the required certification, shall show the amount of tax paid for such vehicle as determined by subsection (f) of this section.

(f)(1)(A) At the time of qualification of any Arkansas registered truck subject to this section which is registered through the International Registration Plan, the division may fix a mileage rate in cents per mile for each truck so registered and qualified.

(B)(i) The division shall determine the mileage rate, utilizing the gross weight declared in the application for registration of the truck, according to the following table:

Vehicle Weight (pounds)	Mileage Rate (dollars)
73,281 – 80,000	$0.05

(ii) The tax determined under this provision for every truck subject thereto shall be in the amount of the determined mileage rate multiplied by each mile the truck is operated over the highways of this state, as reported to the division for registration under the International Registration Plan.

(2)(A) At the time of the qualification of any Arkansas registered truck subject to the provisions of this section, every user not registered through the International Registration Plan shall pay, and every user registered through the International Registration Plan may elect to pay, an annual mileage tax in lieu of an amount determined by the applicable mileage rate set forth by subdivision (f)(1) of this section.

(B) The division shall determine such annual mileage tax by utilizing the gross weight declared in the application for registration of the truck, according to the following table:

Vehicle Weight (pounds)	Annual Tax (dollars)
73,281 – 80,000	$175

(g)(1) The tax, as determined by either subdivision (f)(1) or subdivision (f)(2) of this section, shall become due and payable at the time of registration.

(2) No license shall be issued, nor operation authority granted, to any Arkansas registered user subject to the provisions of this subchapter until such time as the full amount of the tax determined to be due under the provisions of this section, together with all penalties, shall have been paid.

(h) The division is authorized to collect those taxes and fees imposed by this section upon the Arkansas registered users subject to the provisions of this subchapter, to make timely deposits into the State Treasury of all moneys collected by the division, and to administer the provisions of this section as they pertain to Arkansas registered users, including the right to inspect and audit, at reasonable times at any place within this state, the books, records, and documents of any Arkansas registered users required to pay the Highway use Equalization Tax imposed by this section.

(i) (1)(A) The user of any vehicle subject to the provisions of this section, in lieu of qualification in accordance with the provisions of subsection (e) of this section, may remit to the department either an annual mileage tax in an amount determined by subdivision (f)(2) of this section or pay an amount determined by the applicable mileage rate set forth in subdivision (f)(1) of this section or pay a trip permit fee.

(B)(i) It is the intent of this subchapter that all users subject to the provisions of this section must either qualify with the division as provided in subsection (e) of this section and pay the appropriate taxes or comply with the provisions of this subsection.

(ii) All Arkansas registered vehicles must qualify with the division and remit such taxes to the division.

(2)(A)(i) If the user elects to pay the annual mileage tax, the department, upon application thereof and receipt of the payment, shall issue an annual mileage tax certificate to the user which shall be affixed to the cab of the vehicle by the user.

(ii) If the user elects to pay an amount determined by the applicable mileage rate set forth in subdivision (f)(1) of this section, the department shall utilize the appropriate rate multiplied by each mile the vehicle was operated over the highways of this state for the preceding twelve-month period based on mileage records of the user acceptable to the department.

(B)(i) Upon payment of this amount, the department shall issue a certificate to the user, which shall be affixed by the user to the cab of the vehicle.

(ii) If the user elects to utilize a trip permit, trip permits for trucks with a gross weight of seventy-three thousand two hundred eighty-one pounds (73,281 lbs.) through eighty thousand pounds (80,000 lbs.) shall be issued at a fee of eight dollars ($8.00) for each one hundred (100) miles of travel, rounded to the nearest one hundred (100) miles, whether loaded or unloaded.

(iii) These permits shall be issued by the department in such forms as it deems appropriate.

(j)(1) The tax provided for in this section must be paid by the users of all applicable vehicles using the highways of this state.

(2) No reciprocal agreement or agreement of any nature heretofore or hereafter entered into between officials of this state and those of any other state may exempt any user of such vehicles using the highways of this state from the provisions of this section and payment of the tax levied by this section.

(k) Any user found operating any vehicle subject to the provisions of this section over the highways of this state without complying with this section, or without having available in or on the cab the appropriate certificate or trip permit required by this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of no less than two hundred dollars ($200) nor more than five hundred dollars ($500) for the first offense and of no less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for each subsequent offense.

(l) This section shall be liberally construed to effectuate its purposes.

(m)(1) All fees, taxes, penalties, and interest collected under the provisions of this section not specifically classified as constitutional and fiscal agencies funds shall be classified as special revenues and shall be deposited in the State Treasury.

(2) The net amount thereof shall be transferred by the State Treasurer on the last business day of each month:

(A) Fifteen percent (15%) of the amount to the County Aid Fund;

(B) Fifteen percent (15%) of the amount to the Municipal Aid Fund; and

(C) Seventy percent (70%) of the amount to the State Highway and Transportation Department Fund.

(3) These funds are to be further disbursed in the same manner and used for the same purposes as is set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

APPENDIX "C"

HIGHWAY USE EQUALIZATION TAX INFORMATION
AUTHORIZED BY ACT 685 OF REGULAR SESSION
74TH GENERAL ASSEMBLY 1983
REPEALED OCTOBER 9, 1987

	Final F.Y. 1983-1984	Final F.Y. 1984-1985	Final F.Y. 1985-1986	Final F.Y. 1986-1987	Final F.Y. 1987-10-9-87
ANNUAL DECAL COLLECTIONS [1]	$ 8,091,475.00	$10,768,975.00	$11,767,525.00	$12,950,350.00	$11,262,825.00
No. of Truck Owners	10,972	14,405	15,123	18,152	10,010
No. of Trucks Registered	46,237	61,537	67,243	74,002	64,359
MILEAGE DECAL COLLECTIONS [2]	$ 7,070,229.90	$ 9,223,528.39	$ 9,266,718.78	$10,118,993.10	$ 9,843,237.11
No. of Truck Owners	9,566	11,973	10,651	10,252	4,822
No. of Trucks Registered	177,084	175,934	170,632	171,132	157,830
Average Cost Per Truck	$39.92	$52.43	$54.31	$59.13	$62.37
TRIP PERMIT COLLECTIONS [3]	$ 5,782,698.00	$ 6,164,794.58	$ 6,393,451.02	$ 6,530,872.00	$ 1,394,920.00
No. of Trip Permits	297,510	318,977	327,162	337,160	72,559
Avg. Cost Per Trip Permit	$19.44	$19.33	$19.54	$19.37	$19.22
Avg. Trip Permits Per Day	838	873	896	924	718
TOTAL H.U.E. TAX COLLECTED (AHTD)	$20,944,402.90	$26,147,297.97	$27,427,694.80	$29,600,215.10	$22,500,982.11
Total No. of Truck Owners	20,538	26,378	25,774	28,404	14,832
Total No. of Trucks Registered	223,321	237,471	237,875	245,134	222,189
K-TAG H.U.E. TAX COLLECTIONS [4]	$ 1,850,156.00	$ 1,493,516.16	$ 1,454,250.00	$ 1,421,175.00	$ 896,052.00
Arkansas Licensed	8,693	8,534	8,310	8,121	5,120
GRAND TOTAL TRUCK TAX COLLECTED	$22,794,558.90	$27,650,814.13	$28,881,944.80	$31,021,390.10	$23,397,034.11
SPECIALTY CARRIER DECALS [5]	7,263	8,755	1,034	555	119

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APPENDIX "D"

6 7-35-204. Compliance with tax on vehicles weighing more than 73,280 pounds.

Any motor vehicle registered in Arkansas at the maximum registration fee for sixty-eight thousand one pounds (68,001 lbs.) to seventy-three thousand two hundred eighty pounds (73,280 lbs.), as provided in § 27-14-601(a)(3)(G), including any motor vehicle registered under the International Registration Plan at the maximum fee for its Arkansas-apportioned mileage or any motor vehicle registered in any non-IRP state to carry in excess of seventy-three thousand two hundred eighty pounds (73,280 lbs.), shall be authorized to operate in this state with a gross loaded weight of up to eighty thousand pounds (80,000 lbs.), in accordance with §§ 27-35-107, 27-35-203, 27-35-206, and 27-35-208(c), if the vehicle complies with the appropriate subsections of § 27-35-205 and the laws of this state concerning motor vehicle registration and licensing for the qualification year beginning July 1, 1988, and for each year thereafter.

27-35-205. Annual tax on vehicles weighing more than 73,280 pounds.

(a) As used in this section, unless the context otherwise requires:

(1) "Department" means the Arkansas State Highway and Transportation Department;

(2) "Motor vehicle" means all cargo vehicles required to be registered for use upon the public highways of this state designed, used, or maintained primarily for the transportation of property and having a declared gross weight of seventy-three thousand two hundred eighty-one pounds (73,281 lbs.) or more. For the purpose of this section, truck-tractors, single unit trucks, semitrailers, and trailers

operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to the use or control, of the part of such a vehicle furnishing the motive power is the highway user with respect to the entire vehicle and is accordingly subject as such to the provisions of this section;

(3) "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or combinations of "trailers" or "semitrailers" when operated in combination with a truck or truck-tractor;

(4) "User" means any person or entity having the use and control, or the right to the use and control, of any motor vehicle. Use and control of a motor vehicle includes vehicles under a long-term lease and not vehicles under a trip lease;

(5) "Highway" includes all highways, roads, and streets of this state generally open to the use of the public as a way for vehicular traffic;

(6) "Declared gross weight" means the maximum gross weight at which a vehicle is authorized to operate, as shown on the vehicle license registration;

(7) "Gross weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the heaviest semitrailier or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon;

(8) "Arkansas-registered vehicle" or "Arkansas-registered truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident, and bearing an Arkansas license plate;

(9) "Net laden miles" means the total miles driven in Arkansas by the user vehicle less the total unladen miles traveled in Arkansas by the user vehicle; and

(10) "Unladen miles" means those miles traveled with the vehicle totally empty and free of cargo.

(B) It is the intent of the General Assembly that equipment, supplies, fixtures, and materials carried in or on a truck to be used in loading, unloading, covering, containing, packing or securing the cargo hauled or to be hauled shall not be considered cargo within the meaning of that term as used in the definition of unladen miles in subdivision (a)(10)(A) of this section. The terms "equipment, supplies, fixtures, and materials," as used in this section, shall include, but shall not be limited to, lifts, hoists, dollies, pallets, crates, coops, or other containers, covers, packing materials and supplies, chains, cables, braces, and blocks.

(b)(1) An annual tax is imposed upon all users, as defined in subdivision (a)(4) of this section, of motor vehicles, as defined in subdivision (a)(2) of this section, in compensation for the use of the highways of this state. The tax shall be in addition to all other taxes and fees now required to be paid on the vehicles.

(2) Any Arkansas-registered vehicle user who desires to haul in excess of seventy-three thousand two hundred eighty pounds (73,280 lbs.) shall notify the Arkansas Department of Finance and Administration at the time of license registration. The Arkansas Department of Finance and Administration shall then record the maximum declared gross weight on the vehicle license registration and notify the Arkansas State Highway and Transportation Department, in writing, of those vehicles registered in excess of seventy-three thousand two hundred eighty pounds (73,280 lbs.).

(c) The tax imposed by this section shall not apply to any motor vehicle with a declared gross weight, as defined in subdivision (a)(6) of this section, of seventy-three thousand two hundred eighty pounds (73,280 lbs.) or less,

nor to vehicles licensed exclusively for hauling unfinished and unprocessed farm products, forest products, and clay minerals and ores from the point of production, harvesting, or severance to the point at which they shall first undergo any processing, preparation for processing, conversion, or transformation from their raw, natural, or severed state, nor to vehicles used exclusively for hauling animal feed by owners of livestock or poultry for consumption by livestock or poultry owned by them, nor to any vehicle owned and operated by the United States of America or the State of Arkansas or any political subdivision of either.

(d) The provisions of this section shall not apply to any motor vehicle used on an interstate trip with an origin or destination within ten (10) miles of the geographic boundaries of this state if the one-way travel distance in this state is not over ten (10) miles.

(e)(1) The user of every vehicle subject to this section, before operating the vehicle over the highways of this state, shall annually qualify the vehicle with the department. Qualifications shall be made by application to the department on forms to be provided by the department. The department may accept applications from owners of leasing and rental companies that lease vehicles under long-term leases to customer lessees.

(2) Upon receipt of the application and payment of the tax as hereinafter determined, and in the manner hereinafter provided, the department shall make appropriate record of the vehicle qualified and certify the annual qualification on the applicant's tax cab card, one of which is to be carried in the cab of the vehicle at all times. The department shall also issue a decal to the user, which decal shall be affixed by the user to the cab of the vehicle.

(3) Any user qualifying a motor vehicle within his fleet shall be responsible for the removal of the decal and cab card when that vehicle is terminated from the user's

fleet. Failure to remove the decal and cab card, which shall be retained by the user as proof of removal, shall result in a penalty of twenty-five dollars ($25.00) per month for the remaining months of the qualification period after the vehicle was terminated from that user's fleet.

(f)(1) At the time of the qualification of any vehicle subject to this tax, the department shall apply the mileage rate, utilizing the gross weight declared in the application for the vehicle, according to the following table:

Vehicle Weight (pounds)	Mileage Rate (dollars)
73,281 – 80,000	$.025

(2) The tax determined under this provision for every vehicle subject to the tax shall be two and one-half cents ($.025) per mile for the net laden miles estimated to be traveled in Arkansas for the forthcoming twelve months, July 1 through June 30. At his option, pursuant to regulations promulgated by the department, the user may elect to make equal quarterly payments of his annual tax liability. Vehicles added to the fleet during the twelve-month qualification period must qualify by paying two and one-half cents ($.025) per mile for the estimated net laden miles to be traveled in Arkansas in the remainder of the qualifying year, in the manner allowed under regulations promulgated by the department. Underpayments and overpayments may be reconciled at the time of any quarterly estimate payment, or as otherwise allowed by regulation, based upon actual net laden miles traveled in the state during the qualification year with the mileage estimated for the year and an amended application submitted for refund or credit, or with any additional taxes due. Failure to make any quarterly payment as provided by regulation shall result in the cancellation by the department of the user's authority to operate any vehicle out of compliance with this section in this state. At the end of the qualification period, any user qualifying a motor vehicle with the department must submit to the department such

records as the department deems appropriate according to regulations promulgated by the department indicating the total number of miles traveled through the state, both laden and unladen, by the user's vehicle or vehicles. The summary records submitted by the user must be supported by source documents retained by the user. In all cases, specific records must be maintained by the user indicating the above information for every trip whether laden or unladen, pursuant to rules and regulations to be promulgated by the department. The mileage reports and records shall be subject to inspection and audit by the department in the same manner as other books, records, and documents of the user are subject to inspection and audit as provided by this section. Any claims made by the user on the applications and the initial acceptance by the department of those claims, for application purposes, does not preclude a later decision by the department based on specific audit findings during an audit of the user. Any user who shall falsify any records required by this section shall be guilty of a Class A misdemeanor.

(g)(1) The department is authorized to collect those taxes and fees imposed by this section upon all users subject to the provisions of this section, to make timely deposits into the State Treasury of all such moneys collected by the department, and to administer the provisions of this section, including the right to inspect and audit at reasonable times, at any place, without prior notice, the books, records, and documents of any user or other qualifying person required to pay the tax imposed.

(2) No assessment shall be made upon any user under the tax imposed by this section after the expiration of three (3) years from the date the user's application for qualification was made. However, in those cases where an application is deemed to have been fraudulently made, an assessment may be made for any prior qualification period or periods.

(3) Any user who neglects or refuses to pay the tax imposed by this section shall be liable for the full tax amount owed plus interest at the rate of ten percent (10%). If, at the end of the qualification period, based upon the difference between the estimated net laden miles and the actual net laden miles supported by the user's records, the liability exceeds twenty percent (20%), a ten percent (10%) penalty may also be imposed. Any user making quarterly payments who fails to make the quarterly payments, as provided by regulation, may be assessed, after hearing, a five percent (5%) penalty in addition to an interest charge to be calculated in the same manner as provided above.

(h) The user of any motor vehicle subject to the provisions of this section, in lieu of qualification in accordance with the provisions of subsection (e) of this section, may pay a trip permit fee. However, no Arkansas-registered vehicle shall be allowed to utilize a trip permit. The trip permit for trucks with a declared gross weight of seventy-three thousand two hundred eighty-one pounds (73,281 lbs.) through eighty thousand pounds (80,000 lbs.) shall be issued at a fee of eight dollars ($8.00) for each one hundred (100) miles. However, motor vehicle travel in the state, unladen, as that term is defined in subdivision (a)(10) of this section, shall be exempt from payment of the trip permit fee. The permits shall be issued by the department, pursuant to regulations to be promulgated by the department, on such forms as it deems appropriate and shall be retained by the user for a period of three (3) years as proof of payment of any liability determined through audit.

(i) The tax provided for in this section must be paid by the users of all applicable vehicles using the highways of this state. No reciprocal agreement or agreement of any nature heretofore or hereafter entered into between officials of this state and those of any other state may exempt any user of these vehicles using the highways of this state from the provisions of this section and the payment of the tax levied by this section.

(j) Any user, or other qualifying person, of any vehicle subject to the provisions of this section found operating over the highways of this state without complying with this section or without having available in or on the cab of the vehicle the appropriate cab card and decal or trip permit required by this section shall be guilty of a misdemeanor. Upon a conviction, the user of the vehicle or other qualifying person shall be punished by a fine of no less than one hundred dollars ($100) nor more than two hundred dollars ($200) for the first offense, and of no less than two hundred ($200) nor more than five hundred dollars ($500) for the second offense, and of no less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for each subsequent offense.

(k) The annual tax imposed on all users of motor vehicles shall be applicable for the qualification year beginning July 1, 1988, and ending June 30, 1989, and for each year thereafter.

(l) This section shall be liberally construed to effectuate the purposes thereof.

(m)(1) All fees, taxes, penalties, and interest collected under the provisions of this section shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(C) Seventy percent (70%) of the amount thereof to the State Highway Department Fund.

(2) The funds shall be further disbursed in the same manner and used for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

APPENDIX "E"

27-70-202.

(a) As used in this subchapter, unless the context otherwise requires, "highway revenues" means and includes the following special revenues:

(1) Fees for the registration and licensing of motor vehicles, levied and collected under §§ 27-14-305, 27-14-601, 27-14-603, 27-14-605, 27-14-702, 27-14-704, 27-14-709, 27-14-716, 27-14-717, 27-14-914, 27-14-915, subchapters 5, 11-15, 18, 19, and 21 of chapter 14 of this title, and chapter 15 of this title, except motor vehicle in-transit taxes and drive-out tag fees levied, respectively, under §§ 27-14-1805 and 27-14-2104;

(2) Taxes levied and collected under the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Use Tax Law (or Special Motor Fuels Tax Law), § 26-56-101 et seq., commonly referred to, and denominated by the Director of the Department of Finance and Administration for tax distribution purposes, as the gasoline tax.

(b) For the purposes of this section, any penalties, fines, charges, or other amounts paid in connection with, or in lieu of, any of the foregoing enumeration shall be deemed, unless otherwise expressly provided for by law, to be highway revenues and shall be added to, and considered as a part of, the particular foregoing enumeration to which it shall respectively belong.

APPENDIX "F"

27-70-203. Deposit in State Apportionment Fund.

All highway revenues shall be deposited in the State Treasury to the credit of the State Apportionment Fund. After deducting the amount of uncollected checks and reserving the amount as shall be required to liquidate claims for taxes erroneously paid, the State Treasurer shall, on the last business day of each month, transfer these highway revenues in the amounts or proportions, and to the State Treasury funds, specified in § 27-70-205.

APPENDIX "G"

27-70-206. Distribution to state funds.

All highway revenues which are available for distribution during each fiscal year shall be transferred to the following State Treasury funds, and in the order specified, with transfers to be made monthly until all available revenues have been transferred:

(1) First, three percent (3%) of the amount thereof to the Constitutional and Fiscal Agencies Fund, there to be used for the purposes specified for the fund by the Revenue Stabilization Law of Arkansas, § 19-5-101 et seq.;

(2) Next, to the Gasoline Tax Refund Fund, such amount as the Director of the Department of Finance and Administration shall, from time to time, certify to the State Treasurer as being necessary to pay approved gasoline tax refund claims under the provisions of §§ 26-55-301 – 26-55-321 and 26-55-401 – 26-55-408, or other applicable law. However, the aggregate total amount of all transfers under this paragraph shall not exceed two million five hundred thousand dollars ($2,500,000) during any fiscal year.

(3) After meeting the requirements set out in the foregoing subdivisions, all remaining highway revenues which are available for distribution during each fiscal year shall be transferred in the following manner: Fifteen percent (15%) of the amount thereof, to the County Aid Fund; fifteen percent (15%) of the amount thereof, to the Municipal Aid Fund; and seventy percent (70%) of the amount thereof, to the State Highway and Transportation Department Fund.